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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,678	09/28/2006	LeRoy A. Parker JR.	133110-01US	1841
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BUTZEL LONG				
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ANN ARBOR, MI 48104				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
01/21/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent@butzel.com  
boudrie@butzel.com

### Office Action Summary

**Application No.**

10/553,678

**Applicant(s)**

PARKER, LEROY A.

**Examiner**

Lien T. Tran

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

Claims 18-24, 28-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 18: Step e is vague and indefinite; the step recites "cooking said desired shapes to form a chip". It is unclear how many shapes can form one chip; are the shapes adhered to each other or placed on top of each other or what. It is not clear what applicant intends to claim. Step f is also vague and indefinite because it recites repeating steps a-e to form a plurality of chips. Step d recites forming i plurality of shapes by the adding of "s" to shape; however, step f seem to indicate that one dough ball is formed into one chip. Thus it is not clear what applicant intends to claim. Line 13 recites "a lower chip and lower layer of cheese"; it is not clear what would be considered as a lower chip or lower layer. There is no frame of orientation. Line 16, the recitation of "said layer of jerked meat" does not have antecedent basis. Line 17, the use of "said, said" is unclear; also, it is noted that "cip" is misspelled. Line 18, the recitation of "said layer of meat" does not have antecedent basis. Line 21, the recitation of "the components" is unclear because it is not clear what components the claim is referring to.

In claim 20, the recitation of "said selected amount" does not have antecedent basis. Also, it is not clear what the selected amount referred; is it the upper layer of cheese, the lower layer of cheese or both or some other amount not recited.

In claim 28, step 2 is vague and indefinite; it recites "placing said meat component on said cheese component". It is not known what cheese component the step is referring.

Step 1 does not recite any cheese component. Also, it is not clear where the meat component is placed because there is no cheese component or chip recited. Where does the meat component go?

In claim 32, the recitation of "said jerked meat" does not have antecedent basis. Also, it is unclear how a claim is depended on itself. For art rejection, the claim is interpreted to be depended on claim 28.

Claims 18-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker in view Trout.

Parker discloses a method of forming a taco chip. The method comprises providing grain component such as masa harina, salt, water and shortening, heating the shortening and mixing it with the masa harina, salt and water to form a mixture, forming the mixture into a ball, flattening the ball into a disc, cutting the disc into selected shapes and heating the shapes to form chips. ( see col. 2 line 43 through col. 3 line 25)

Parker does not disclose applying a jerked meat and two layers of cheese to a first chip and placing a second chip on top of the meat and cheese layers, the amount of meat and cheese and the size of the chips.

Trout et al disclose a lipid-based fillings. The fillings include a cheese filling. The filling is used in snack foods such as tortilla sandwiches or potato crisp sandwiches, comprising two chips which sandwich the filling. ( see col. 9 lines 55-58, col. 7 lines 5-10) .

The limiting of claims 18,25 and 28 to "consisting of" does not define over the combination of prior art because Parker teaches to make the chip with the processing

steps as claimed. The use of the chips to make a sandwich in view of the teaching of Trout et al would encompass the sequence of steps as claimed. The concept of forming a chip sandwich in which a filling is sandwiched between two chips is known in the art as shown by Trout et al. Thus, it would have been obvious to one skilled in the art to form a chip sandwich as taught by Trout et al in the Parker process to form different food product having different flavor, taste and texture. Trout et al disclose cheese filling sandwiching between two chips. It would have been obvious to one skilled in the art to add additional meat component and additional cheese layers depending on the taste and flavor wanted. The combination of meat and cheese product in corn chip product or in a sandwich is notoriously well known; such products include taco, burrito, enchilada, hamburger, meat sandwiches etc.. Thus, it would have been obvious to one skilled in the art to use any filling such as meat, lettuce in addition to the cheese filling disclosed by Trout et al depending on the taste and flavor desired. It would have been obvious to one skilled in the art to keep the layers distinct when desiring the distinct flavors provided by the fillings. The concept of layering different types of filling in a sandwich is not new; in fact, it is a common practice. The desirability does not have to be explicitly recited in the art; it can be suggested from what is known in the art and the preference of the individual consumer. Food products having distinct layers are common in the art. For example, in a typical sandwich, there are layers of meat, cheese, condiment and vegetable. In a pizza, there are distinct layers of dough, sauce, cheese, meat. In a nacho, there are chips and the meat and cheese layered on top of the chips. Thus, the concept of making a chip sandwich such that the different foods do not commingle and

have distinct flavors would have been readily apparent to one skilled in the art. Furthermore, the products that are being pressed together are chips. It would have been readily apparent to one skilled in the art that the chips have to be pressed slightly or else they will break. Chips are frangible product; they are not flexible to allow for much pressing. It would have been obvious to use any amount of filling depending on the quantity of filling wanted in the product. It would have been obvious to one skilled in the art to make the chips in any size desired. The size can vary and its selection would have been an obvious matter of reference. It would have been obvious to make more than one layer of cheese as an obvious matter of preference when desiring additional cheese flavor and the layering configuration. It would have been an obvious matter of preference to use any type of meat including jerk beef. It would have been obvious to repeat the steps of making chips when more chips are desired.

The claims submitted with the RCE filed on 12/8/09 do not define over the prior art as set forth in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 15, 2010

/Lien T Tran/

Primary Examiner, Art Unit 1794